HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION Nos.5867 and 10938 of 2006

W.P.No.5867 of 2006

Between:

K.L.Wagh

... Petitioner

AND

The Municipal Corporation of Hyderabad
and others.

... Respondents

Counsel for the Petitioner : None

Counsel for the Respondents : Shri G.Rama Rao

W.P.No.10938 of 2006

Between:

Sree Venkata Parvatheeswara Alyam

... Petitioner

AND

The Municipal Corporation of Hyderabad
and another.

... Respondents

Counsel for the Petitioner : Shri G. Vidyasagar

Counsel for the Respondents : Shri G.Rama Rao

20th September, 2006

: COMMON ORDER :

Per C.V.NAGARJUNA REDDY, J.

Letter dated 3-3-2006 sent by one Sri K.L.Wagh, son of Laxman Wagh with the complaint that the authorities of Municipal Corporation of Hyderabad (for short, 'the Corporation') are not taking steps to remove the encroachment and illegal construction made on the land earmarked for public park in Lalitha Nagar, Hyderabad, was treated by one of us i.e., the Chief Justice, as a petition in public interest.

In his letter, Sri K.L. Wagh stated that he is the President of Lalitha Nagar Residents Welfare Association, Hyderabad, which was founded by the residents of Lalitha Nagar colony in the year 1977 and was registered with registration No.1105/77 with the object of securing civic amenities for the colony and to look after the welfare of the residents of Lalitha Nagar and espouse their cause before the concerned authorities and courts. It has been further stated in the said letter that South Central Railway Men's Cooperative Housing Society (for short, 'Society') acquired a piece of land to an extent of 21,385 square yards forming part of old Survey No.71/2 correlating to Town Survey No.11, Ward 144, Block "N" of Zamistanpur Village situated opposite Jamai Osmania Railway Station and within the limits of Boudhanagar Ward of Secunderabad Division/Circle of the Corporation from Z.A. Kamil and others through registered sale deeds. The Corporation approved the final layout vide reference No.25243/B1/72, dated 14-2-1974 and that the colony formed out of this approved layout was developed and named as Lalitha Nagar. It is further mentioned in the said letter that an area admeasuring about

756 square yards towards the western end of the colony was earmarked and reserved for development of a park, that this is the only space reserved for recreation facility out of the layout area of 21,385 square yards and it works out to 3.545%, but the open space reserved for public park was allowed to be encroached publicly and systematically with the tacit understanding and connivance of the officials of the Corporation, that the encroachers started erection of illegal and unauthorized structures on this land earmarked for park and that despite several representations made by the Society, Lalitha Nagar Welfare Association and the residents of Lalitha Nagar to the Corporation for removal of encroachments and development of the space as a public park, the authorities concerned failed to take any action.

Having regard to the contents of the above reproduced letter, the Registry of the Court framed the following prayer clause:

> "For the reasons stated in the "Petition" dated 03.03.2006 sent by the petitioner herein, this Hon'ble Court may be pleased to issue an order, direction or a Writ more particularly one in the nature of Writ of Mandamus to call for the records and remarks from the respondents herein in and connected to (i) the action taken by the Hyderabad Municipal Corporation authorities to protect and develop the entire open space of 756 square yards specifically earmarked for "park" in Lalitha Nagar Colony forming part of the approved lay out of South Central Railway Men's Cooperative Housing Society.
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> and
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> prays the Hon'ble Court to direct the respondents herein (i) to retrieve the entire open space of 756 square yards in Lalithanagar Colony earmarked for "pack" in the South Central Railway Men's Cooperative Housing Society's lay out approved by the Municipal Corporation of Hyderabad,

Secunderabad vide No.25243/B1/72 dated 14.02.1974 from all illegal encroachments and unlawful structures including the illegal structure build for self vending milk booth which has since been abandoned and become obsolete; (ii) to secure the entire open space of 756 square yards in Lalithanagar Colony earmarked for "park" in the South Central Railway Men's Cooperative Housing Society's approved lay out by construction of compound wall; (iii) to develop the entire open space of 756 square yards as "park" with greenery and lawns with all basic infrastructure facilities including water and lighting etc., in conformity with the approved lay out and to pass such other or further orders as this Hon'ble Court may deed fit and proper in the circumstances of the case."

On 24-3-2006, this Court ordered notice to the three respondents viz., the Municipal Corporation of Hyderabad (for short, 'the Corporation'), the Additional Commissioner, Municipal Corporation of Hyderabad, Secunderabad Division and the Secretary to the Government of Andhra Pradesh, Municipal Administration.

It is borne out from the record that after receipt of notice issued by this Court, the Corporation initiated action under Section 452 of the Hyderabad Municipal Corporation Act (for short, 'the Act') and called upon the management of Sree Venkata Parvatheeswara Alayam (for short, 'the temple') represented by its Chairman, Sri Sudhakar Rao, to show cause as to why the construction raised in the open space earmarked for park should not be removed. In its reply dated 3-5-2006, the management of the temple pleaded that they had not encroached on the land earmarked for public park. However, the concerned authority of the Corporation did not feel satisfied and notice dated 29-4-2006 was issued under Section 636 of the Act directing the temple authorities to

remove the unauthorized structures. At that stage, the temple authorities filed Writ Petition No.10938 of 2006 and succeeded in persuading the learned Single Judge to pass interim stay.

With a view to avoid possibility of conflicting orders, the Division Bench by its order dated 6-6-2006 directed that both the writ petitions be listed together.

In the affidavit filed on behalf of the Corporation in Writ Petition No.5867 of 2006, it has been averred that the land earmarked for the park has been encroached by the management of the temple, and when action was initiated for removing the unauthorized structures, Writ Petition No.10938 of 2006 was filed questioning notice dated 19-5-2006 and the learned Single Judge vide his order dated 31-5-2006 stayed further action.

In the affidavit filed in support of Writ Petition No.10938 of 2006, Sri P.Sudhakar Rao, Managing Trustee of the temple has averred that his father had constructed Lord Siva temple on government land in the year 1982. Subsequently, the government allotted 565 square yards falling in T.S.No.14 of Block 'N', Ward No.144 to the management of the temple. At that stage, it was revealed that the temple was built on a total area of 834 square yards including 269 square yards, which was a private land falling in T.S.No.11, Block 'N', Ward No.144, which was recorded in the name of Smt.Narsamma, wife of Agi Reddy, Smt.Taira Khader Begum and Smt.Tahera Kamil, wife of Z.A.Kamil respectively.

Sri Sudhakar Rao has further averred that on receipt of notice issued under Section 452 of the Act, a representation was made to the Corporation authorities that no encroachment has been made on the land earmarked for public park. However, this did not satisfy the

concerned authority and notice dated 29-5-2006 was issued under Section 636 of the Act. Sri Sudhakar Rao has pleaded that the Corporation authorities cannot demolish the structure without verifying the facts regarding the status of the land.

The Additional Commissioner has filed counter affidavit on behalf of the Corporation in Writ Petition No.10938 of 2006 in consonance with the stand taken by the Corporation in Writ Petition No.5867 of 2006.

We have heard Sri G.Vidyasagar, learned counsel for the petitioner in Writ Petition No.10938 of 2006 and Sri G.Rama Rao, learned counsel for the Corporation.

A careful scrutiny of pleadings of the two writ petitions makes it clear that an extent of 756 square yards forming part of the layout sanctioned by the Corporation for the Society was reserved and earmarked for development of a park and the temple was constructed in T.S.No.14, Ward No.144, Block "N" of Jamisthanpur Village, Musheerabad Mandal. The affidavit filed by Sri Sudhakar Rao shows that as against an extent of 565 square yards allotted it, the temple has raised structures on an extent of 834 square yards of land. From the two counter affidavits filed by the Additional Commissioner of the Corporation, it is quite evident that the excess land in occupation of the temple adjacent to the extent of 565 square yards allotted to the temple is part of 765 square yards, which forms part of the approved layout of the Society.

In the face of these incontrovertible facts that Sri G.Vidya Sagar, learned counsel for the temple fairly conceded, during the course of hearing on 15-9-2006, that his client is ready and willing to remove the unauthorized construction from the land earmarked for

public park.

In view of the above, Writ Petition No.5867 of 2006 is disposed of with a direction to the Corporation to remove the unauthorized construction made on the land earmarked for public park within a period of fifteen days. As a consequence of the direction issued in Writ Petition No.5867 of 2006, Writ Petition No.10938 of 2006 is dismissed.

Before parting with the case, we cannot restrain ourselves from expressing our displeasure over the apathy being shown by the Corporation authorities to the complaints received from the general public against the unauthorized encroachments of public properties and unauthorized constructions made either without sanctioned plans or in deviation of sanctioned plans. In the instant case, as far back as 27-1-2000, the Society brought to the notice of the Commissioner and Special Officer of the Corporation about the encroachments, craving for an immediate action to remove all encroachments and unauthorized structures. On 29-10-2003, another detailed representation was given by the Lalitha Nagar Residents Welfare Association to the Additional Commissioner of the Corporation seeking his intervention. The said representation referred to a news item published in Eenadu daily dated 27-06-2001, which carried a report on the encroachments. We are astonished that none of these alarm bells could wake up the Corporation authorities from deep slumber. It is only when this Court issued a notice and an interim direction in Writ Petition No.5867 of 2006 that respondent Nos.1 and 2 appeared to have woken up from the hybernation. The Corporation, it is needless to say, is the trustee of not only the public properties vested in it by the Act, but also of the public faith. The least that is expected of the Corporation is to respond

immediately to the complaints against encroachments and unauthorized/illegal constructions by examining the correctness or otherwise of the complaints and take appropriate action.

C.V.NAGARJUNA REDDY, J.

20th September, 2006.

G.S.SINGHVI, C.J.

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